

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD SUBREGION 34**

**CHARTER COMMUNICATIONS,  
INC. D/B/A SPECTRUM,**

**Employer,**

**and**

**INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS (IBEW)  
LOCAL 2323,**

**Petitioner.**

) **Case 01-RC-290605**

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**EMPLOYER'S POST-HEARING BRIEF**

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May 20, 2022

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## **I. OVERVIEW**

COMES NOW Charter Communications Inc., d/b/a Spectrum (“Charter” or the “Employer”), by and through its undersigned counsel, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, as amended, and timely files this post-hearing brief in the above action.

## **II. PRELIMINARY STATEMENT**

Prior to the election, the parties stipulated to a unit consisting of the Field Techs (“FT”) and Maintenance Techs (“MT”) working out of Charter’s North Windham, Connecticut, Field Management Area. Petitioner, however, insisted on including two additional classifications, consisting of one TQA Technician (“TQA Tech”) and two Construction Coordinators, in the vote. Charter objected to their inclusion. The Parties agreed to allow the three contested employees to vote subject to challenge. The three votes cast by these individuals must be excluded as they do not share a community of interest with the petitioned-for unit.

The Board considers the following factors under its community-of-interest test:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*United Operations, Inc.*, 338 NLRB 123, 123 (2002). Applying that standard to the TQA Tech and Construction Coordinator positions at issue here, it is clear that they cannot and do not share a community of interest with the FTs and MTs in the petitioned-for unit.

The sole TQA Tech that Petitioner seeks to include in the unit is actually part of a separate 11-member TQA Tech team based and managed out of Charter’s Southern New England management area headquarters in Worcester, Massachusetts (Tr. 297-98 ; Emp. Ex. 1, p. 6). The

TQA Tech's supervisor and manager are based in Worcester, he meets with the TQA group, does not meet with the FT or MT groups, or any North Windham-based groups, and does not fill in for either FTs or MTs (Tr. 296-98). Petitioner's efforts to carve a lone TQA Tech out of a well-defined 11-employee TQA group and operational structure that is intentionally designed to give the TQA Department independence from the FTs they audit is contrary to well-established community-of-interest criteria. Indeed, the Board has consistently held that it will not approve units that do not align with the employer's operational structure. See, e.g. *Specialty Healthcare*, 357 NLRB 934 (2011); *Bergdorf Goodman*, 361 NLRB 50, 52 (2014). As for carving a single TQA Tech out from the remainder of his 11-member team, the Board has consistently held it will not approve fractured units. See, e.g., *Seaboard Marine*, 327 NLRB 536 (1999); *Pratt and Whitney*, 327 NLRB 1213, 1217 (1999); *Odwalla, Inc.*, 357 NLRB 1608 (2011); *Bergdorf Goodman*, 361 NLRB at 52.

Moreover, Charter's TQA Techs, including the one at issue here, perform different functions than those performed by FTs and MTs, further evidencing the lack of a community of interest between the groups. The Employer has a TQA Department and TQA Techs to serve two primary functions: (1) handling significant customer repeat trouble calls (Tr. 299); and (2) performing quality audits and reviews on the work performed by FTs and outside contractors that led to the trouble calls. FTs and MTs do not perform either function (Tr. 300).

The quality audit work TQA Techs are expected to perform involves evaluating the work of FTs (Tr. 302-05). Likewise, the level repeat trouble calls that TQA Techs perform at customer premises are more involved than the ordinary service work FTs are assigned, and bear nothing in common with the cable plant maintenance and repair work that MTs perform (Tr. 323-32; Emp. Ex. 24 and 26). Finally, except in rare circumstances, TQA Techs do not perform installation work, all of which is performed by (FTs Tr. 87, 310.)

Given the above facts, *Bergdorf* is controlling in the instant case and requires a finding that the TQA Tech does not share a community of interest with a unit of FTs and MTs. As argued more fully below, *Bergdorf* makes clear that the Board cannot approve a unit that ignores the employer's established organizational structure, as Petitioner is attempting to do here. Moreover, Petitioner cannot establish the factors set out in *Bergdorf* that might overcome the Employer's structure (e.g., common supervision, interchange, pay or other terms) as they are not supported by the record.

Likewise, the two Construction Coordinators do not share a community-of-interest with the MTs or the FTs. The work performed by the two North Windham Construction Coordinators Petitioner seeks to include is radically different from the job duties performed by FTs and MTs, who work in the field installing and repairing the Company's products and services. For example, the majority of the Construction Coordinators' time is spent indoors coordinating and overseeing the expansion of the Employer's footprint and network (Tr. 143-44, 172-73; Ex. 10, 11, and 12). They do not maintain or repair the Company's network (MT work), or install or repair Charter services in customer residences and businesses (FT work) (Id.). Unlike FTs and MTs, Construction Coordinators also only have management meetings with Construction Operation personnel and no other departments or job classifications, are not eligible for any type of bonus, only work day shift/normal business hours, and are the only job classification to have extensive training and usage of the Prism system used to manage construction projects. (Tr. 149, 152, 156-57, 159, 167-69; Emp. Ex 7).

Based on established community-of-interest standards, it is clear that the Construction Coordinators in North Windham also do not share a community of interest with the FTs and MTs in the petitioned-for unit.

### **III. STATEMENT OF FACTS**

#### **A. PROCEDURAL HISTORY**

On February 15, 2022<sup>1</sup>, the International Brotherhood of Electrical Workers Local 2323 (the “Petitioner” or the “Union”) filed its petition seeking to represent certain employees at the North Windham FMA. The petition sought the following unit:

**INCLUDED:** Field Technicians, Maintenance Technicians, Plant Maintenance Technicians, Broadband Technicians, TQA Technicians, Construction Technicians

**EXCLUDED:** All other employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

On March 7, the parties stipulated to an April 7 election with the following unit description.

**INCLUDED:** All full-time and regular part-time Field Technicians and Maintenance Technicians employed by the Employer at its North Windham, Connecticut facility.

**EXCLUDED:** Office clericals, managers and guards, professional employees and supervisors as defined in the Act.

**OTHERS PERMITTED TO VOTE:** The parties agree that the Construction Coordinators and TQA Technicians who report to the North Windham, Connecticut location may vote in the election, but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in this classifications or groups have been included in or excluded from the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

The election resulted in 13 votes for the Union, 13 votes against the Union, and three challenged ballots that were determinative. The challenged ballots were cast by TQA Tech (b) (6), (b) (7)(C) and Construction Coordinators (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

On April 27, Subregion 34 ordered a hearing on the challenged ballots which was held from May 4 – 5.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all dates referenced in this brief relate to 2022.

<sup>2</sup> At the outset of the hearing, the Hearing Officer identified the burden of proof as being on “the party seeking to

## **B. SPECTRUM'S BUSINESS**

### **1. Overview of Operations**

Charter is a telecommunications company that offers video, internet, phone and mobile services to over 30 million customers in 41 states (Tr. 21). Charter's operations are organized into eleven geographic regions which are further divided into thirty-six management areas, or MAs, within those regions. MAs are further divided into field management areas (FMAs). (Tr. 21-23.)

The disputed unit in this case concerns the North Windham, Connecticut FMA,<sup>3</sup> which is part of Charter's Southern New England MA (SNE).<sup>4</sup> SNE has three distinct departments: Field Operations, Field Engineering, and TQA Field Operations (Tr. 25; Emp. Ex. 1, p. 1).

The parties stipulated that a unit of FTs and MTs at the North Windham facility is an appropriate unit.<sup>5</sup> However, the Employer contends that it is not appropriate to include TQA Technicians ("TQA Techs"), or Construction Coordinators in this unit.

#### **a. Field Operations Department**

FTs in SNE are part of the Field Operations Department, which is managed by two Field Operations Directors (Emp. Ex. 1, pp. 1-3). The two Directors report to Greg Garabedian, the Area Vice President (AVP) and highest ranking management official in SNE, who works in the Worcester office (Emp. Ex. 1, p. 1). Field Operations Director Kevin Mailloux oversees Field Operations for the Worcester and Orange, Massachusetts; and Keene, New Hampshire, FMAs

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exclude or disenfranchise an employee or employee classification" (Tr.10-11).

<sup>3</sup> The North Windham FMA is also referred to as the Willimantic FMA. Throughout this brief, references to North Windham FMA and Willimantic FMA should be considered the same and considered the same operational unit.

<sup>4</sup> The SNE management area also includes FMAs located in Newtown, Connecticut; Chicopee, Massachusetts; Athol, Massachusetts; and Keene, New Hampshire.

<sup>5</sup> The Board has recognized that in cases "in which the parties stipulated to a unit and the Union has accepted an interpretation of the petitioned-for unit, [the Board will] treat the petitioned-for unit, as construed, as the petitioned-for unit for purposes of the [community-of-interest] analysis." *Odwalla, Inc.*, 357 NLRB at 1611, fn. 27.



(Emp. Ex. 1, pp. 2-3). Mailloux has three Field Operations Managers reporting directly to him (Id.). Two of the three (Eric Hashley and Dean Johnson) oversee supervisors located at the above FMA sites. (Emp. Ex. 1, p. 2).

Field Operations Director Timothy Adam oversees Field Operations in Chicopee, MA and Newtown and North Windham, CT (Emp. Ex. 1, p. 3). Adam has two managers reporting to him, Ray Bonenfant and John Langhill (Id.). Bonenfant has four supervisors reporting to him, who direct 29 FTs in Newtown (Id.). Langhill, who is responsible for the North Windham and Chicopee FMAs, also has four supervisors, two in each FMA (Id.). The two Field Operations Supervisors assigned to North Windham are Kevin Perez and Andrew Dickerman (Emp. Ex. 1, p. 3). Dickerman supervises nine FTs and Perez supervises seven, all of whom work out of North Windham. (Id.) Perez and Dickerman also both have offices in the North Windham location (Tr. 94, 124). The North Windham FTs attend weekly group meetings in North Windham run by their supervisors, where they discuss a variety of work-related issues (Tr. 258-60).

FTs perform installation and repair work (known as “trouble calls” or “TCs”) on customer premises (Tr. 218-29; Emp Ex. 13, 14, 15, 16, and 17). They are responsible for installations and handling wiring and equipment issues that arise in the premises or with the lines running from the customer premises to the Employer’s network (*i.e.*, the utility pole or “tap”) (Id.). FTs are assigned company vans, hand tools, meters, ladders, customer premise equipment (modems and cable boxes) and other material necessary to install and service customers (Tr. 256-58). FTs are assigned to zones and are “drip routed” work assignments through an automated system known as Tech Mobile that sends the assignments to them during the workday on their mobile devices based on their location and availability (Tr. 282, 362). The amount of work assigned to FTs is measured in

points, which reflect the average time it takes to perform the assigned tasks (Tr. 365). FTs can be routed installation or trouble call work based on their availability (Tr. 365-66).

FTs have a career progression which allows them to move from FTI through FT IV through course work and performance and FTV and FTVI based on course work, performance, and posted openings that are filled through a competitive process (Emp. Ex. 18 and 19). In addition to hourly wages, FTs are eligible for monthly bonus payments based on their performance metrics, including productivity, avoiding repeat trouble calls, and compliance with established procedures. Each FT is measured against, or “stack ranked” against the other FTs in the SNE MA, and both eligibility for the monthly bonus payment (known as PAA) and the amount of the bonus is based on the FTs ranking or “tier” measured against other FTs (Tr. 267-70; Emp. Ex. 9). FTs work a variety of shifts covering the time periods from 8:00 am to 5:00 pm and 12:00 pm to 9:00 pm, covering seven days a week (See Bd. Ex 2).

#### **b. Field Engineering Department**

The SNE Field Engineering Department consists of two functions, Maintenance and Construction (Tr. 26-28; Emp. Ex.1, p. 4). The Director of Field Engineering for the SNE management area is Michael Liccione (Tr. 81), who reports to Garabedian, the AVP (Tr. 34; Emp. Ex. 1, p. 1). Two maintenance managers report into Liccione, Dennis Palavicini and Steve Costen (Emp. Ex. 1, p. 4). Palavicini oversees three Maintenance Supervisors including Mark Montana, the maintenance supervisor with responsibility for the MTs in North Windham. (Id.). Montana, whose office is in North Windham, only has responsibility for the North Windham MTs (Tr. 20, 125).

MTs are responsible for repairing and maintaining the Employer’s cable lines and other equipment attached to utility poles and underground (Tr. 43; Emp. Ex. 3, 4, and 5). They are assigned trucks with lift buckets, along with meters and other tools and equipment necessary to

perform their work (Tr. 61). Work is assigned to MTs through a system known as Lighthouse, which informs them when there are signal issues at a particular “node” or area (Tr. 136-37). MTs are the only job classification to work on the “node” (Tr. 74). Once there, they are expected to diagnose and repair any issues causing signal problems (Tr. 43). All of the MTs’ work is conducted in the field. MTs attend weekly meetings run by the Maintenance Supervisor, where they discuss a variety of work issues (Tr. 663, 65, 66). These meetings are only attended by MTs. MTs work three distinct shifts with first shift starting at 7:00 am, second shift starting at 3:00 pm and third shift starting at 11:30 pm (Bd. Ex. 2).

The Construction Department is also part of the Field Engineering Department (Emp. Ex. 1, p. 4). Liccione has one construction manager who reports to him, Ted Michaud (Id.). Michaud has two supervisors, Keith Cournoyer and Tom Converse. (Id.). Cournoyer oversees nine Construction Coordinators, including the two Construction Coordinators assigned to the North Windham FMA. Cournoyer’s office is also located in North Windham (Id.). Construction Supervisor Converse, who is based in Worcester, supervises 10 Construction Coordinators (Id.).

The two Construction Coordinators assigned to North Windham are (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (Tr. 389-92; Emp. Ex. 7). They are responsible for assigning and overseeing projects given to outside contractors to extend and repair the Employer’s hybrid fiber coaxial (HFC) network (Tr. 148-49; Emp. Ex. 10, 11, and 12). This includes surveying prospective sites for cable construction or repair, calculating labor and material costs for the project (Tr. 143-44, 148-49, 159-60), submitting a costs proposal to the business planning department for funding, selecting the appropriate outside contractor to build the construction project (Id.), reviewing the work performed by the contractors they retain, and ensuring that construction projects are performed timely and up to the Employer’s standards. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) also perform quality

review over the construction projects (Id.). Once the project is complete, they sign off on any invoicing and then close the project. (Tr. 143.)

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) spend approximately 60% of their time in the North Windham office and 40% in the field. (Tr. 144-45, 172). They share an assigned office. Unlike FTs and MTs, they do not perform any field work, nor do they receive the tools and equipment FTs and MTs receive (Tr. 168-71). Rather, they use tools such as measuring wheels to calculate distances that contractors will need to run cable. (Tr. 168.) Construction Coordinators are provided a company pickup truck, but the trucks are not equipped with ladders or lifts, nor are they stocked with any equipment, items, or materials necessary to perform trouble calls or installations (Tr. 106, 170).

Construction Coordinators use Prism, a software tool, to receive assignments as well as to plan, manage and process their various construction projects (Tr. 117-18, 152-53). Construction Coordinators also use CAD software to map out construction projects (Tr. 157-58). They do not use the Lighthouse software used by MTs or the Tech Mobile tool used by FTs (Tr. 136-37, 235).

The Construction Coordinators in North Windham participate in daily meetings with their supervisor, attended by Cournoyer's entire team, and weekly meetings with their manager, attended by the entire SNE Construction team (Tr. 113-14, 190). The Construction Coordinators do not participate in any meetings with other operational areas nor do they receive direction from supervisors in any other department.

Construction Coordinators have a separate career progression, which includes levels I-III, with Construction Coordinator III positions subject to a training requirement and a posted opening with a competitive process (Tr. 178). Construction Coordinators are not eligible for PAA or any other bonus program. (Tr. 177.)

### **c. TQA Field Operations Department**

The TQA Field Operations Department (TQA Department) is overseen by TQA Manager, Jeremy Wassarman. (Tr. 123; Emp. Ex. 1, p. 6). Wassarman, who reports directly to the AVP, is located in the MA headquarters in Worcester along with Garabedian (Emp. Ex. 1, p. 1). Wassarman has one TQA Supervisor reporting to him, Chris Senosk, who is also located in Worcester (Tr. 296; Emp. Ex. 1, p. 6). Senosk manages all 11 of the TQA Techs in SNE who cover the five different FMAs in the SNE management area. (Emp. Ex. 21). Six TQA Techs are located in Worcester, two in Chicopee, one in Newtown, one in Keene, and one in North Windham (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) is the TQA Tech in dispute. (Id.). None of the North Windham supervisors have oversight over (b) (6), (b) (7)(C) (Tr. 316).

“TQA” is an abbreviation for Technical Quality Assurance and, as the name implies, the primary purpose of the department is to ensure the quality of the work performed in customers’ premises (Tr. 299). This involves conducting quality control audits (QCs) on the work performed by FTs and contractors to identify any failures or poor work. (Tr. 35, 198, 302-05.) Because of this quality control function, the Employer intentionally structures its organization such that the TQA Department reports directly to the AVP instead of through the Field Operations Department. (Tr. 34-37). This separate organizational structure ensures that the quality assurance function performed by TQA Techs remains independent and cannot be impacted by Field Operations management. (Id.).

In addition to quality audits, TQA Techs are primarily assigned and responsible for completing what are referred to as repeat trouble calls, repair appointments that involve, as the name indicates, repeated service issues at the same customer’s premises (Tr. 310). The TQA Techs are highly qualified technicians with strong customer service skills who are sent on these repeat trouble calls to ensure that the issue is finally resolved. (Tr. 324; Emp. Ex. 24). These multiple

repeat calls are separated out from other assignments – which are automatically routed through drip routing – and assigned to the TQA Techs within each area (Tr. 26, 299, 324).

In connection with these repeat trouble calls, the TQA Techs must perform quality control audits (“QCs”), as discussed above, to identify if the FT or contractor assigned to the prior trouble call or installation failed in performing any steps. All TQA Techs are responsible for conducting a QC whenever they are assigned a repeat trouble call (Tr. 333). They perform these “QCs” through the use of a system known as Penguin that contains over 50 procedural items the TQA Techs are required to evaluate in rating the FTs (Tr. 118, 302-03; Emp. Ex. 22). TQA Techs are trained on the use of Penguin (Tr. 118). The Penguin reports cover signal security, exterior wiring and connection, grounding, interior wiring, workmanship and customer experience (Tr. 215-16; Emp. Ex. 20). Access to Penguin is enabled whenever a TQA Tech completes a repeat trouble call and the TQA Tech is required to complete a QC in Penguin (Tr. 118, 302-03).

TQA Techs are the only individuals who have access to the full Penguin system and are able to input ratings and results for quality control inspections (Tr. 118). Field Operations management only has access to the results of Penguin reports and will only receive a detailed report if the FT fails a QC inspection (a score of 85 or lower). (Tr. 304-05). FTs only know if one of their jobs has been subject to a QC if they fail (Tr. 249-52).

While TQA Techs may also be assigned similar trouble calls as FTs in order to ensure they remain productive, their primary function is to address and resolve repeated and troublesome issues, and audit and provide QC feedback which then may be given to FTs. The existence of the TQA Department is premised and structured based on this function. TQA Techs are rarely assigned installations and only in emergencies (Tr. 87, 310.)

Employer's Exhibit 26 shows the number of audits performed by TQA Techs from June 2021 to January 2022. Employer's Exhibit 25 contains a summary of the different job assignments performed by (b) (6), (b) (7)(C) from October 2021 through April 2022. This Exhibit is significant because it also shows each occasion when (b) (6), (b) (7)(C) was required to perform a QC. (Emp. Ex. 25; Tr. 337-339.) Employer's Exhibit 25, reveals that between October 2021 and April 2022, (b) (6), (b) (7)(C) was required to perform 64 QC audits. Despite being required to complete the QC audits, (b) (6), (b) (7)(C) ignored his obligation and performed only eight QC audits during this period (Emp. Ex. 23).

In order to perform their job duties, TQA Techs are provided a company van and equipment that includes signal meters, hand tools, and ladders (Tr. 313). TQA Techs spend most of their time out in the field (Tr. 26). (b) (6), (b) (7)(C) only reports to the North Windham office to pick up equipment and materials from the warehouse. (b) (6), (b) (7)(C) attends the weekly TQA meetings by telephone, which are conducted by Wassarman and Senosk. No FTs or MTs participate in these meetings, nor does (b) (6), (b) (7)(C) attend the weekly FT or MT meetings. (Tr. 259-60, 304, 315-16, 343-44) (b) (6), (b) (7)(C) works a Sunday – Thursday shift schedule (Emp. Ex. 7). (b) (6), (b) (7)(C) hours of work are from 8:00 a.m. to 5:00 p.m. (Id.).

The TQA Tech classification is not a part of the FT or MT career progression (Emp. Ex. 19). Instead it is a separate career track, requiring an open position that is subject to a competitive application process (Id.). TQA Techs are eligible for a PAA bonus, but subject to a different plan than that of FTs and MTs (Tr. 319-24). They are ranked only among the 11 TQA Techs and they all qualify for a bonus payment regardless of tier due to the more time consuming nature of their work in ensuring all repeat problems are resolved and QCs are conducted on all repeats (Tr. 319-20).

#### IV. ARGUMENT

##### A. THE TQA TECHS AND CONSTRUCTION COORDINATORS DO NOT SHARE A COMMUNITY OF INTEREST WITH FTs AND MTs

###### 1. Community of Interest Standard

In analyzing a petitioned-for unit, the Board determines if the unit is appropriate and, if so, will defer to the petitioner. *Morand Bros. Beverage Co.*, 91 NLRB 409, 417-418 (1950), enfd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951); see also, *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnight Transportation Co.*, 322 NLRB 723 (1996). The petitioner need only seek an appropriate unit, not the preferred or most appropriate unit. See *Bartlett Collins Co.*, 334 NLRB at 484 (quoting *Morand Bros. Beverage Co.*, 91 NLRB at 419). In determining whether the petitioner seeks an appropriate unit the Board considers traditional community-of-interest standards.

The Board considers the following factors under its community-of-interest test:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*United Operations, Inc.*, 338 NLRB 123, 123 (2002).

The traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community-of-interest within the petitioned-for unit. *Sachs and Co.*, 204 NLRB 24, 25 (1973). In this regard, "[the Board has] always assumed it obvious that the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community-of-interest among various groups of employees in the plant and is thus an important consideration in any unit determination." *International Paper Co.*, 96 NLRB 295, 298, fn. 7 (1951). See also *Gustave Fischer, Inc.*, 256 NLRB 1069, 1069, fn. 5 (1981) (citing *International Paper Co.*, 96 NLRB at 298, fn. 7; *Specialty*



*Healthcare*, 357 NLRB at 942, fn. 19; *Bergdorf Goodman*, 361 NLRB at 52. For this reason, the Board has consistently held that it will not approve a fractured unit, see, e.g., *Seaboard Marine*, 327 NLRB at 536; *Pratt and Whitney*, 327 NLRB at 1217; *Odwalla, Inc.*, 357 NLRB at 1608, or one that “do[es] not resemble any administrative or operational lines drawn by the employer” *Bergdorf Goodman*, 361 NLRB at 52. Applying the traditional community-of-interest standards to the instant dispute, it is clear that the North Windham TQA Tech and the two Construction Coordinators do not share a community-of-interest with the FTs and MTs at the North Windham facility.

**2. TQA Techs Do Not Share a Community-of-Interest with FTs or MTs Because They are Part of a Separate Organization that Exists to Perform the Role of Identifying and Remediating Service Issues After Visits from FTs**

(b) (6), (b) (7)(C), the TQA Tech at issue in this matter, works in a separate organization that is separately supervised out of a central location away from North Windham and is part of a team that performs a separate function from FTs and MTs. Therefore, (b) (6) cannot and does not share a community-of-interest with the FTs and MTs that form the petitioned-for unit. Indeed, to include (b) (6), (b) (7)(C) in a unit with FTs and MTs would fracture (b) (6), (b) (7)(C) from the unit with which (b) (6), (b) (7)(C) does share a community of interest – the 10 other TQA Techs in his TQA department in the SNE MA. An analysis of the TQA Tech job in light of the traditional community of interest standards clearly shows the TQA Tech classification must be excluded from the unit. In fact, as detailed further below, the Board’s decision in *Bergdorf* is determinative in this case and compels the conclusion that the TQA Tech does not share a community of interest.

**a. The TQA Tech is Part of a Different Organization with a Separate Location and Separate Supervision from the other Departments in the Petitioned-for Unit**

The TQA Tech is part of a Worcester-based SNE-wide team, covering multiple facilities and areas and reporting into a single Supervisor and a single Manager. Both the Supervisor and

the Manager are located at the main SNE Worcester facility, and a majority of the TQA Techs on the team are assigned to the Worcester facility. That the Manager and department report directly to the AVP rather than to or through the Field Operations Department is not by accident or convenience. It is an intentional separation from the Field Operations team to avoid a conflict between those who manage and perform installation and service work (Field Operations and FTs) and those charged with reviewing and policing the FTs' adherence to Employer standards (the TQA Department and TQA Techs). Simply put, the TQA Tech at issue is not part of the same department, team, organization, or unit as the FTs or MTs in North Windham; rather (b) (6), (b) (7)(C) is part of a Worcester-based department with responsibility across the entire SNE Management Area. The TQA Tech receives all of (b) (6), (b) (7)(C) direction from (b) (6), (b) (7)(C) TQA Supervisor in Worcester as well as (b) (6), (b) (7)(C) annual performance reviews. The North Windham supervisors do not have any authority over, and only minimal contact with, (b) (6), (b) (7)(C) and the FTs in North Windham do not need to have any work related contact with (b) (6), (b) (7)(C) (Tr. 256, 262). To separate this one TQA Tech from (b) (6), (b) (7)(C) 11-member Worcester TQA team and attach (b) (6), (b) (7)(C) to a North Windham-based unit completely ignores the Employer's organizational structure and the manner in which (b) (6), (b) (7)(C) work is managed and (b) (6), (b) (7)(C) employment structured. See, e.g., *Cablecom-General, Inc.*, 190 NLRB 506 (1971) (based on separate operational structure, Board determined cable company's construction employees should be excluded from unit of technicians and installers).

#### **b. The TQA Tech Has Distinct Job Functions, Skills and Training**

Although there may be some surface similarities between the job functions of TQA Techs and FTs, most notably that they both visit customer premises to repair service in response to trouble calls, there are substantial differences. Those differences are the reason that a separate TQA Department with a distinct team of TQA Techs exists. The fundamental reason for the TQA Department is to diagnose and repair recurring service issues (repeat trouble calls) and to perform

QC inspections on FTs' and installation contractors' work to ensure compliance with Employer standards and procedures. Unlike FTs, who are responsible for installation and service work from a general pool of customer appointments, the repeat trouble calls that TQA Techs are responsible for are identified and manually assigned to the TQA Techs. TQA Techs are responsible for ensuring that repeated customer issues are resolved. TQA Techs are also trained on and must use a separate system, Penguin, to complete QCs and report any issues identified from prior trouble calls or installations. The TQA Tech position also requires an advanced experience and skill level, and expertise in proper installation and service policies and practices in order to identify any failure to comply with standards. The Parties stipulated that the training provided to TQA Techs is separate from the training provided to the FTs (Tr. 55-58). The Board has held that employees with distinct skills and training lack a community of interest with others in the petitioned-for unit. See, e.g., *Overnight Transportation Co.*, 331 NLRB 662, 663-64 (2000); *Cal-Main Farms, Inc.*, 249 NLRB 944 (1980).

**c. There is Insufficient Functional Integration, Overlap or Interchange Between TQA Techs and FTs and MTs**

TQA Techs are not functionally integrated with FTs by design, due to their role in auditing and reporting on FT work quality and compliance with standards. The two organizations are also separated by geography. The TQA Tech at issue uses the North Windham facility only as a location to pick up equipment and materials. (b) (5), (b) Company meetings are mainly telephonic and are always with (b) (5), Worcester-based TQA management and TQA team. In contrast, FT and MT meetings are held at the North Windham location and the TQA Tech does not attend. FTs are auto-routed work within two zones of the North Windham service area, while the TQA Tech can be sent anywhere within the service area to perform work. FTs do not fill in for TQA Techs when they are absent, nor do the TQA Techs fill in for absent FTs. When necessary, TQA Techs will travel into other

FMA's to perform repeat trouble calls and QCs (Tr. 26, 86-90). FTs do not. TQA Tech is a separate career path from FT, with a different performance and incentive standard. TQA Techs also receive a guaranteed incentive payment because of their lower productivity standards due to the focus on diagnosing complex service issues and performing QC audits on prior work. FTs and MTs are not guaranteed incentive payments. Nor was there any evidence presented that (b) (6), (b) (7)(C) interacts with MTs in North Windham. Indeed, despite identifying (b) (6), (b) (7)(C) as a witness, Petitioner did not have (b) (6), (b) (7) testify at the hearing.

**d. TQA Tech is not part of the FT career progression but instead is subject to posting and a competitive application process (Emp. Ex. 19). FTs and MTs by contrast have career progression tracks within their departments. *Bergdorf Goodman* is Controlling Law with Respect to the TQA Tech and Mandates that He be Excluded from the Unit**

The Board's decision in *Bergdorf Goodman*, 361 NLRB 50 (2014) is controlling in this case, with the factors identified by the *Bergdorf* Board weighing even more heavily against a finding of community of interest here. The petitioner in *Bergdorf Goodman* sought a unit of shoe salespeople across two departments who were "readily identifiable as a group" because they comprised all employees at the store with responsibility for selling women's shoes. In spite of several factors that weighed in favor of a finding of community of interest, including that the petitioned for unit (1) had virtually identical job responsibilities, (2) were the only employees in the store paid on the same draw against commission basis, (3) were hired under the same criteria and (4) were subject to the same employee handbook and appraisal process, the Board held that "the balance of the community-of-interest factors weighs against finding that the petitioned for unit is appropriate . . ." because "[t]he boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer." *Id.* at 52.

In rejecting the petitioned for unit, the Board cited *Specialty Healthcare*:

It is highly significant that except in situations where there is prior bargaining history, *the community-of-interest test focuses almost*

*exclusively on how the employer has chosen to structure its workplace.* As the Board has recognized, “We have always assumed it obvious that the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination.” 357 NLRB No. 83 at 9 fn 19, quoting International Paper Co., 96 NLRB 295, 298 fn. 7 (1951). In other words, *in determining whether employees in the proposed unit share a community of interest, the Board both ensures that they can be fairly represented by a single representative and that bargaining will occur within boundaries that make sense in the employer’s particular workplace.* This is true not simply because most of the facts at issue (lines of supervision, skill requirements, wage rates, etc.) are established by the employer, but also because the lines across which those facts are compared are typically drawn by the employer: lines between job classifications (as here), departments, functions, facilities and the like.

357 NLRB 934, 942 fn. 19 (2011) (emphasis added).

Because the *Bergdorf* unit did not reflect the employer’s organization, the Board refused to allow the petitioner to carve Contemporary shoes employees out of the Contemporary Sportswear department, excluding the other sales associates in that department, and add them to the whole Salon shoes department. *Id.* At 52. The *Bergdorf* Board did note that the employer’s organizational structure might have been outweighed by other community of interest factors if they had existed (they did not, and do not in the instant case). For instance:

- If Salon shoes and contemporary shoes shared common supervision in spite of being in different departments; or
- If there was significant interchange between employees.

However, the Board concluded no such factors existed, as

- The two had different department managers, floor managers and directors of sales and only shared common supervision at the highest level of store management, the general manager; and

- The two groups had only limited contact as there was no evidence that employees from either group had been asked to fill in for one another on a temporary or permanent basis and that contact was limited to store meetings, locker room and cafeteria, and evidence that the employer encouraged inter-selling between the departments.

The factors weighing against the TQA Tech sharing a community of interest with the FTs or MTs in this case are even more stark than those in *Bergdorf*. As in *Bergdorf*, inclusion of the TQA Tech in the disputed unit would defy the Employer's clear organizational lines, as TQA is a separate department with a separate line of supervision with no commonality until the AVP, the highest-ranking manager in SNE. Here, however, the Petitioner attempts an even greater departure from the Employer's lines of demarcation. The Petitioner here seeks to go well beyond the line drawn by *Bergdorf* by seeking to carve out a single TQA Technician out of the 11-person TQA department, orphaning (b) (6), (b) from that Department. That cannot constitute an appropriate unit pursuant to *Bergdorf*.

Moreover, none of the other factors identified in *Bergdorf* outweigh the organizational structure here. In this regard, the Employer notes that the Petition did not call (b) (6), (b) (7)(C) to testify about any community of interest factors. There is no evidence of interchange as TQA Techs do not fill in for FTs or vice versa. They do not attend the same employee meetings and the fact that there might be some minor similarities in job responsibilities because they are both assigned trouble calls cannot be a significant factor when compared to the identical job responsibilities of the women's shoe salespeople in *Bergdorf*. For all of these reasons, *Bergdorf* compels a finding that the TQA Tech must be excluded from the unit and the Employer's challenge sustained.



**3. Petitioner's Contentions at Hearing Regarding the TQA Tech are Without Merit**

**a. (b) (6), (b) (7)(C) Failure to Perform (b) (6), (b) (7)(C) Required QC Audit Duties Does Not Create a Community of Interest with the FTs in the Unit**

Petitioner suggested at the hearing that (b) (6), (b) (7)(C) shares a community of interest with the FTs and MTs because (b) (6), (b) (7)(C) did not perform a substantial number of QC audits and thus, must have performed the same work as FTs. There is no merit to this argument.

The overwhelming weight of the record establishes that performing QC audits on repeat trouble calls is a primary and required function of TQA Technicians, as established by (1) the TQA Technician job description, which lists QC audits as the first responsibility of the position (Emp. Ex. 22); the uncontroverted testimony of Liccione and Senosk (Tr. 26-27, 299, 302-04); the uncontroverted records reflecting the significant number of QC audits performed by TQA Technicians, including (b) (6), (b) (7)(C) (Emp. Ex. 23, 26); and the testimony of Petitioner's witness (b) (6), (b) (7)(C), who explained the need for QC audits in discussing why the TQA Tech work is different from FT work:

... [T]hey go out to high number of escalations. So say if there was a high number of repeats. Say if a customer had an issue and they called a repeat number of times, five or six times, they would call a TQA tech out to resolve that issue to try to be the last line of offense to make sure the customer is satisfied. And when they are there, they are supposed to find anything that they see that could have been the problem or something that was overlooked and fill out a form to make sure the house is certified, they shouldn't have any other issues and this is the reason why this is what I came up with.

(Tr. 442-43).

The only fact Petitioner could point to at the hearing as to why (b) (6), (b) (7)(C) should not be excluded from the unit is documents that show that (b) (6), (b) (7)(C) failed to perform many of the required QC audits on the repeat trouble calls (b) (6) handled (Emp. Ex. 23, 25). As Petitioner refused to have (b) (6), (b) (7)(C) testify at the hearing (despite listing (b) (6), (b) (7)(C) as a witness), Petitioner could not controvert the

evidence establishing that (b) (6), (b) (7)(C) was required to perform the audits, that all other TQA Techs performed the audits on their assignments (Emp. Ex. 26) and that (b) (6), (b) (7)(C) did in fact perform QC audits, even as late as April 2022 (Emp. Ex. 23), nor could Petitioner offer any explanation as to why (b) (6), (b) (7)(C) did not perform this required task. It is thus uncontroverted that performing QC audits was a central and distinguishing responsibility for all TQA Technicians, including (b) (6), (b) (7)(C) whether or not (b) (6), (b) (7)(C) completed them. (b) (6), (b) (7)(C) refusal to perform this central job function does not allow Petitioner to claim (b) (6), (b) (7)(C) is somehow similar to FTs (who do not perform QC duties) or shares a community of interest with the FT Department.

#### **4. Construction Coordinators Do Not Share a Community of Interest with MTs or FTs**

The two Construction Coordinators working out of the North Windham FMA belong to the Construction Department, which falls under Field Engineering (Tr. 27, 97; Emp. Ex. 1, pps. 4-5). The Construction Coordinators are an entirely separate function from the MTs and FTs as they are solely responsible for overseeing the build out of Charter's network through the use of cable construction contractors (Tr. 143). The Construction Department in the SNE management area has a distinct and separate chain of management, and the applicable Construction Coordinators do not share any common supervision with any other job classifications in North Windham (Tr. 97, 147, 173). To the contrary, the Construction Supervisor located in North Windham has supervisory responsibility for the two Construction Coordinators at issue here, as well those in the Newtown and Chicopee FMAs (Tr. 173; Emp. Ex. 1, p. 5).

While the Construction Coordinators are required to have knowledge of how Charter's cable networks work, that knowledge is applied in an entirely different manner compared to the MTs or FTs (Tr. 43, 44, 48, 59-60, 65-66, 77, 167, 211-12, 230, 312-13). The Construction Coordinator's knowledge is geared towards facilitating work performed by external cable construction companies (Tr. 146). A majority of the work performed by the Construction



Coordinators is performed indoors in their office, the polar opposite from the field work that forms the vast majority of the work performed by MTs and FTs (Tr. 25-26, 43 172, 391). The Construction Coordinators perform a majority of their work in their office because their work involves overseeing the construction process by dealing with contractors, permitting authorities, utility pole owners and performing other tasks to facilitate the construction process. The Construction Coordinators do not climb poles or repair cable plant, nor do they perform service or installation on customer premises. (Tr. 179, 184.)

When the Construction Coordinators do go into the field, their work involves identifying and plotting new build locations, performing measurements, marking locations, or monitoring the progress of construction jobs (Tr. 173, 153, 165). Construction Coordinators also have a quality review function that involves ensuring that the work performance of the outside contractors is meeting the project specifications and other requirements (Tr. 191-92).

Because the primary task for Construction Coordinators involves overseeing and managing outside entities such as construction contractors, their only work schedule is during the day and they do not work any evening or night shifts, which is required by the MTs and FTs. (Emp. Ex. 7).

During the hearing, the Petitioner's lone witness was (b) (6), (b) (7)(C), one of the Construction Coordinators working in North Windham. While (b) (6), (b) (7)(C) testified about work-related interactions (b) (6), (b) (7)(C) had with MTs and FTs, (b) (6), (b) (7)(C) admitted that (b) (6), (b) (7)(C) was not required to interact and involve MTs to initiate (b) (6), (b) (7)(C) work or to complete required work assignments. (Tr. 431-34.) (b) (6), (b) (7)(C) also admitted that all of (b) (6), (b) (7)(C) assignments had to come through the Construction Department management chain. (Tr. 430-435).

The Construction Coordinators have a completely separate career progression from the FT Techs and Maintenance Techs and are not eligible for any incentive payments (Tr. 177). The North

Windham Construction Coordinators are evaluated based on their ability to manage projects and meet established deadlines (Tr. 206-07). Unlike MTs and FTs, they are not evaluated on daily service calls or similar type productivity (Tr. 177, 206-07).= Because their jobs responsibilities are so disparate from those of the MTs and FTs, the Construction Coordinators do not share a community of interest and should not be part of the unit. The Employer's challenges should be sustained.

## V. CONCLUSION

For the foregoing reasons, the lone TQA Tech and two (2) Construction Coordinators working out of the North Windham FMA have a sufficiently distinct community-of-interest as compared to the FT Techs and Maintenance Techs. Therefore, the challenges to the TQA Tech and the Construction Coordinators should be sustained and these job classifications should not be included in the petitioned-for unit at the North Windham FMA.

Respectfully submitted,

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Dated this 20th day of May, 2022.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD SUBREGION 34**

**CHARTER COMMUNICATIONS, INC. D/B/A SPECTRUM**

**Employer**

**And**

**Case 01-RC-290605**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS  
(IBEW) LOCAL 2323**

**Petitioner**

**STATEMENT OF SERVICE**

The undersigned hereby states that the foregoing document in the above-captioned case has been E-Filed on the National Labor Relations Board's website, and a copy served on the following by email, on the date indicated below:

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Michael D. Carrouth

May 20, 2022.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION ONE, SUBREGION 34**

**In the Matter of:**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 2323  
Petitioner**

**and**

**Case 01-RC-290605**

**CHARTER COMMUNICATIONS, INC.,  
D/B/A SPECTRUM  
Respondent**

**LOCAL 2323’S MEMORANDUM ON CHALLENGED BALLOTS**

**Introduction**

This matter is before the Regional Director for determination of challenges to voters (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Based on a petition filed February 15, 2022, and pursuant to a Stipulated Election Agreement in an election conducted April 7, 2022, to determine representation by IBEW Local 2323. Construction coordinators (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and TQA field technician (b) (6), (b) (7)(C) voted subject to challenge. The Union asserts they are all eligible to vote.<sup>1</sup>

**Background**

The Employer is a telecommunications company that provides internet, video, voice and mobile services to business and residential customers. Union Exhibit [“UX”] 1 at 5. All unit employees work at the North Windham, Connecticut “business location.” Board Exhibit [“BX”] 2 (voter list); Transcript [“TR”] 92. The petitioned-for unit includes two (2) construction

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<sup>1</sup> The RD should be cognizant that exclusion from the petitioned-for unit could leave the TQA FT unrepresented. *See United Rentals, Inc.*, 341 NLRB 540, fn. 11 (2004); *Victor Industries Corp.*, 215 NLRB 48 (1974); *Felix Half & Brothers, Inc.*, 132 NLRB 1523, 1524 (1961).

coordinators [“CC”], sixteen (16) field technicians [“FT”], one (1) TQA field technician [“TQA FT”], and ten (10) maintenance technicians [“MT”]. Generally, CC design and coordinate construction; FT and TQA FT install, disconnect, upgrade, troubleshoot and repair services; and MT maintain and repair the fiber coax network and equipment. TR 52-53; 143.

### **Summary of Argument**

The challenges should be overruled because the employer cannot overcome the “heavy presumption” that the challenged positions lack any community of interest with the presumptively appropriate single-facility, wall-to-wall North Windham unit. Plainly, the North Windham facility is not merged or integrated with other facilities. All unit positions are functionally integrated because the work of each position is functionally dependent upon and closely related to each other - design and construction by CC leads to installation and repairs by FT and TQA FT, which leads to network maintenance by MT. All unit positions work in the same geographic area under similar conditions, receive similar wages and same benefits, use similar tools and equipment and are commonly supervised with regard to hiring, firing, salary range and discipline. All unit positions have overlapping – sometimes identical – job duties which require them to interact with each other. The employer’s departmental and supervisory structure is largely ceremonial, as wages, benefits, job assignments, work rules, recordkeeping, timekeeping and job performance are centrally administered.

### **Argument**

#### **I. THE CHALLENGES SHOULD BE OVERRULED**

##### ***A. The Petitioned-for Unit is Presumptively Appropriate***

Section 9(a), “read in light of the policy of the Act, implies that the initiative in selecting an appropriate unit resides with the employees.” *In Re Specialty Healthcare & Rehab. Ctr. of*

*Mobile*, 357 NLRB 934 (2011). *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). “[E]mployees may seek to organize ‘a unit’ that is ‘appropriate’—not necessarily *the* single most appropriate unit.” *In re Specialty Healthcare*, 357 NLRB at 942. *See also Overnite Transportation Co.*, 322 NLRB 723 (1996).

The Board has long found that a plantwide unit is presumptively appropriate and "a community of interest inherently exists among such employees." *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962). It is well-established that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962).

The petitioned-for unit is also subject to the “wall-to-wall” presumption. *See Airco, Inc.*, 273 NLRB 348, 349 (1984) (plantwide or overall unit is presumptively appropriate and party contending that such a unit is inappropriate bears the burden of rebutting that presumption). The parties stipulated that the only North Windham “employee” excluded from the unit is the PEGG access coordinator, Michael Sweet, who is a professional employee. TR 247-248. *Cf. Triangle Bldg. Products, Corp.*, 338 NLRB 257, 258, 2002 (unit excluding professionals is “wall-to-wall.”).

When a party takes the position that a single-facility unit is not appropriate, that party bears the “heavy burden of overcoming the presumption.” *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). Because the Employer bears the burden of proof here, it must provide more than conclusory evidence. *Starbucks Corporation and Workers United*, 2022 WL 562195, at \*2.



***B. The Petitioned-for Positions Share a Community of Interest***

The determination whether a unit is appropriate focuses “on whether the employees share a ‘community of interest.’” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). The Board examines

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

*In Re Specialty Healthcare*, 357 NLRB at 942.

The Region should note that this is not a case in which the employer contends that the “the smallest appropriate unit must include additional employees.” *PCC Structural, Inc. and International Association of Machinists & Aerospace Workers, AFL-CIO, District Lodge W24*, 2017 WL 6507219, at \*1. “*PCC Structural* applies when a non-petitioning party contends that the petitioned-for unit is inappropriate unless the unit includes certain additional employee classifications.” *AT&T Mobility Services, LLC and Communication Workers of America, AFL-CIO, CLC*, 2021 WL 3406265, at \*1. *See also Davidson Hotel Company, and Unite Here, Local 1*, 2021 WL 6550466, at \*1.

[T]he standard articulated in *PCC Structural* does not apply in cases where ...no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit. ... Rather, in cases where the petitioner seeks a presumptively appropriate unit--such as the wall-to-wall unit at issue here--“the burden is on the Employer to demonstrate that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit.” (Citations omitted, emphasis added).

*Blue School Employer and Local 2110, Technical, Office & Professional Union, UAW*, 2021 WL 4893906, at \*1.<sup>2</sup>

In denying review, we clarify that the three-step analysis set forth in *The Boeing Co.*, 368 NLRB No. 67 (2019), applies only when a non-petitioning party asserts that the petitioned-for unit is inappropriate unless the unit *includes* certain additional employee classifications; it does not apply where, as here, a party contends that the petitioned-for unit (which seeks all editorial-department employees) is inappropriate unless it *excludes* certain petitioned-for classifications (those in the Design Center and Digital Team subdivisions).

*Los Angeles Daily News Publishing Company*, 2021 WL 6502835, at \*1.

Nor is it significant that the challenged positions may share some community of interest with positions outside the unit.

[T]he relevant legal question before us is whether the Employer has met its heavy burden to overcome the presumption that the petitioned-for single store unit is appropriate; the mere fact that the petitioned-for employees may share some community of interest with excluded employees does not serve to rebut the presumption.

*Starbucks Corporation and Workers United*, 2022 WL 562195, at \*1.

### **1. All Unit Positions are Functionally Integrated.**

Functional integration occurs when the work of one group of employees is functionally dependent upon or closely related to that of another group of employees. *Durham School Services, LP* Case 01-RC-284132 (November 18, 2021) at \*11. It would be difficult to conceive of a more functionally integrated operation. Indeed, the employer's witnesses conceded this point:

Q. So we are talking about a single integrated operation with multiple jobs contributing to the success of the operation?

A. I guess you could say that.

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<sup>2</sup> The Board recently invited briefing on whether to adhere to the *PCC Structural*s legal standard. See *American Steel Construction, Inc.*, 371 NLRB No. 41 (2021).



TR 93 (Michael Liccone [“Liccone”]).

Q. So we are talking about one single continuum from design to construction to installation to maintenance?

A. If you want to look at it in those terms, probably yes.

TR 184 (Theodore Michaud [“Michaud”]).

To provide broadband services, the employer designs and constructs a physical plant (the CC), installs and repairs internet services (FT and TQA FT) and maintains and repairs the fiber communications network (MT). Each element is completely dependent on the others.

This functional integration is reflected in the day-to-day activities of unit employees. FT and MT in the field may notice a new residential development and tip off the CC for new construction. TR 194; 404. CC notify customer service when a construction job is completed, so the customer can schedule a FT to install service. TR 416, 418. FT may identify a fiber network issue and report the problem back for repair by an MT or new construction by a CC. TR 61. Or the MT may diagnose network issues or damaged equipment which are referred back to CC. TR 151.

## **2. Departmental Structure Favors a Single Unit.**

Departmental structure favors a single unit. All unit positions are in the Southern New England Region, and the North Windham CMA, and report to the same Area Vice President, Greg Garabedian, the same Human Resources department, the same Technical and Safety Training department and the same safety committee. Company Exhibit [“CX”] 1. And while TQA FT and CC are in separate departments, the same is true of FT and MT, so the unit as stipulated already crosses departmental lines.

CC and MT have local supervisors, but both are in the Field Operations Department, reporting to Tim Adams. TR 27, 143. TQA FT are in TQA Field Operations, but even their

supervisor Christopher Senosk [“Sinosk”] did not know why TQA field operations was structured as it is. TR 299. Certainly, it is not because (b) (6), (b) (7)(C) actually performs TQA (rather than FT) functions. *See infra* at 10.

### **3. Lack of Distinct Skills and Training Favors a Single Unit.**

By stipulation, the employer provides training on common topics along with some specific training within job classification:

Charter Communications, Inc. d/b/a Spectrum (“Company”) maintains a comprehensive training program for all employees. This training program involves employees using in-person and online training. Part of the training program involves providing training on topics that are common to all employees. Examples of these topics include EEO policies, general safety requirements, and other guidelines and requirements applicable to all employees in all locations regardless of job classification or work location.

The Company also maintains job classification specific training for employees. This training program also involves employees using in-person and online training. This training is needed for employees to progress to within a job classification and to maintain proficiency within a job classification.

The employees employed at the Company’s facility located at 207 Tuckie Road, North Windham, Connecticut, which includes employees in the Field Technician, Maintenance Technician, CC, and TQA Technician job classifications, participated in both types of training.

BX 3. Formal training for all positions is offered through outside “partners,” NCTI and SCTE, via online modules – not by a supervisor. TR 56, 224-225.

All unit positions have the same required skills – English language, computer knowledge, a valid driver’s license and a high school diploma or GED. All unit positions share physical and mental requirements – climbing, carrying equipment, working at heights and effective communication with customers and employees, basic math and electronics. *See* CX 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17 and 22 (job descriptions).

CC in particular do not have distinct skills and training. CC learn job skills from experience as MT. (b) (6), (b) (7)(C) started work with the employer in (b) (6), (b) (7)(C) as (what is now classified as) a FT,

(b) (6) was then promoted to what is now classified as a MT in (b) (6), (b) (7) then promoted to CC in (b) (6), (b) (7)(C).

CC and MT receive the same training on fiber operations. TR 149-150.

TQA FT do not have distinct skills and training. TQA FT come from FT positions. Training at the FT V/TQA I and FT VI/TQA FT II is identical. CX 19 at 4.

#### **4. Job Functions and Work Favor a Single Unit.**

##### **a. CC do not have distinct job functions or perform distinct work.**

The Union agrees that CC have dissimilar job functions, but they are not “distinct.” The Board has held that the Regional Director should look beyond the “primary” skills and functions to the underlying common skills.

Although employees in the Design and Digital subdivisions have different “primary” functions from employees in the Assignment Desk and use different computer programs, all employees in the editorial department are required to have good writing skills and news judgment and are subject to the same professional and ethical guidelines.

*Los Angeles Daily News Publishing Company*, 2021 WL 6502835, at \*1. For CC, this means the skills, abilities and knowledge set forth in the job descriptions, CX 10, 11 and 12. In this respect, the CC is similar to the MT, FT, and TQA FT, CX 3, 4, 5, 12, 13, 14, 15, 16, 17 and 22. CC have the same work locations (facility and job site) as other unit employees. CC and MT use PRISM software to track construction projects, to varying degrees. TR 155-156, 157, 196 (Michaud).<sup>3</sup> MT and CC consult the same construction schematics. TR 195. And like the positions in *Los Angeles Daily News*, all unit positions are subject to the same ethical guidelines in the Code of Conduct. UX 2.

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<sup>3</sup> Michaud’s testimony contradicts Liccone, who claimed that only the construction department uses PRISM. TR 117.

**b. TQA FT do not have distinct job functions or perform distinct work.**

TQA FT and FT perform similar (often identical) primary job functions and work. The “major duties and responsibilities,” “required qualifications,” and “working conditions” of the positions are virtually identical. Compare CX 22 (TQA FT job description) with CX 15, 16 and 17 (FT IV, V and VI job descriptions). TQA FT and FT share “common duties” of “basic troubleshooting, trouble type jobs.” TR 253. (Dickerman). TQA FT may even perform FT I and II-level work, including first service of a customer. TR 86-87. TQA FT perform the same service changes, special requests, trouble calls and rescues as FT. CX 24 and 27. Even the proportion of such calls is similar, with trouble calls predominating and “special requests” second for both classifications. *Id.* And while the employer claimed that TQA FT performed more repeat trouble calls on average than FT, their numbers were virtually identical in March 2022. CX 27.<sup>4</sup> TQA FT and FT check operating ranges with cable signal. TR 284-285 (Dickerman). If the TQA FT is not available, FT perform complex network service. TR 302. Like FT, TQA FT receive work assignments through Drip Routing via the Tech Mobile app on their company phone. TR 305-306. TQA FT and FT are assigned the same work when there are no multiple repeat calls in the area. TR 310. (b) (6), (b) (7)(C) in particular had to frequently go back and forth to do regular quota. TR 367-368. TQA FT and FT also share the same career path and much of the same training. TR 274-276 (Dickerman); CX 19. TQA FT and FT use the same tools. TR 314 (Senosk).<sup>5</sup>

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<sup>4</sup> Although the data could be easily produced, TR 90-91, the employer failed to offer an ‘apples-to-apples’ comparison of TQA FT and FT. It is disingenuous for the employer to include FT I and II in the comparison, since those positions do not typically perform repeat calls, CX 19 at 2 and TR 219, and TQA FT do not typically perform installs and service changes. TR 88 (Liccone), 310, 342. The employer added level FT I and II in the exhibit to skew the percentages.

<sup>5</sup> Senosk claimed that FT do not use Penguin, but Dickerman testified that FT and FT supervisors receive Penguin results, and if a FT fails a QCA, they also receive a link to Penguin to view their results. TR 252.

The employer's claim that the TQA FT has significant quality control responsibilities crumbled on examination. TR 347-350. Just once since July 2021 did (b) (6), (b) (7)(C) perform a quality control audit ["QCA"]. Over the past three years, (b) (6), (b) (7)(C) went months without performing a single QCA. CX 23. TQA FT in other locations also rarely performed QCA, or performed none at all. In January and February 2022, eight of the eleven TQA FT performed no QCA. *Compare* CX 21 (TQA FT list and location) *with* CX 26. Dickerman testified that FT he supervised had received just one QCA deficiency in the past year. TR 273.

The employer's claim that (b) (6), (b) (7)(C) work was deficient in this respect is belied by (b) (6), (b) (7)(C) favorable evaluations during 2021 and 2022, when (b) (6), (b) (7)(C) rarely performed QCA. TR 358-361. Indeed, the Sinok only examined (b) (6), (b) (7)(C) QCA report at the direction of employer's counsel. TR 356. It became an issue "now that there is a Union organizing drive [the number of (b) (6), (b) (7)(C) audits has] come to [Sinok's] attention." TR 347.<sup>6</sup> *Cf. General Fabrications Corp.*, 328 NLRB 1114, 1126 (1999) (heightened supervision during organizing violates the Act).

Of course, even if QC duties were a significant part of the TQA FT job, that would not require exclusion from the unit. The Board has generally held that quality assurance personnel share a community of interest with production personnel where their jobs are functionally integrated in the work product, despite having separate supervision or working in separate departments. *Keller Crescent Co., Inc. and Local 505-m, Graphic Communications International Union, AFL-CIO, Petitioner*, 326 NLRB 1158, 1159, 1998 WL 698777, at \*4. See also *Hogan Mfg.*, 305 NLRB 806, 807 (1991); *Virginia Mfg. Co.*, 311 NLRB 992 (1993); *Blue Grass*

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<sup>6</sup> The TQA FT job description, which lists QCA as a "major duty," is suspect. Unlike the other job descriptions, CX 22 is undated and unattributed to any employee. Of course, the job description does not trump actual evidence of an employee's job duties. *Western Union Telegraph Co.*, 242 NLRB 825, 826 (1979).



*Industries*, 287 NLRB 274 (1987); *Lindberg Heat Treating Co.*, 245 NLRB 1133 (1979); *Exxon Co., U.S.A.*, 225 NLRB 10 (1976); *Bendix Corp., Launch Support Div.*, 182 NLRB 430, 432 (1970); *Textron Lycoming Div., Avco Corp.*, 308 NLRB 1045, 1047 (1992).<sup>7</sup>

**5. Unit Employees have Frequent Contact with Each Other.**

In North Windham, “everyone knows everyone.” TR 396. CC, TQA FT, FT and MT all work from the same business location in the same geographic field area during overlapping work hours. They share office, break, sanitary and warehouse facilities. TR 92-93; 109. They attend many of the same meetings. TR 114 (HR “road show” meetings); 421 (benefit meetings and meetings regarding new equipment); 422 (anti-union meetings); 423 (safety meetings). Their paths routinely intersect.

**a. CC Frequently Interact with Other Unit Employees.**

(b) (6), (b) (7)(C) testified that (b) (6) has significant on-the-job interaction with MT and FT.<sup>8</sup> CC will often call MT to ask questions that may help with pricing or giving instructions to the contractor. MT may be troubleshooting a job and discover that a span of cable needs to be replaced, so they fill out a plant replacement document and send it to their supervisor to refer it to construction. TR 113. CC will sometimes call the MT for clarification.

FT will often call CC for system maps to facilitate installations. Indeed, CC have sufficient interaction with other unit employees that both parties designated CC as their election observer. TR 389-390.

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<sup>7</sup> CC also have a quality control function regarding completion of construction projects. TR 192.

<sup>8</sup> (b) (6), (b) (7)(C) 2020 performance review complemented (b) (6), (b) (7)(C) relationships with FT and MT. TR 429.

(b) (6), (b) (7)(C) testified that (b) (6) received “Y4” construction referrals from FT and MT and provided some examples. Y4 are downed lines, broken pedestal, broken lockbox to be repaired. TR 396. This occurs at least weekly. TR 397. This is confirmed by the MT job descriptions, which indicates they “may collaborate with construction personnel. CX 3, 4 and 5. (b) (6), (b) (7)(C) will “reach out” to FT and MT to obtain more detailed information – where exactly was the break or part that needs to be replaced. TR 398. Contact information with other unit employees is available through the company directory. TR 399, 427. (b) (6), (b) (7)(C) gets referrals from FT to get a “heads up about a particular job or if the customer has a specific request. TR 403.

CC interact with MT regarding pole shifts and power supply shifts, low hanging lines, hazards, new amplifier installations. TR 412. If a contractor completes a job improperly, FT or MT will contact the CC. TR 415. They share certain equipment, including a shop vac to clear conduit, a conduit router. (b) (6), (b) (7)(C) 2020 performance review complemented (b) (6), (b) (7)(C) relationships with FT and MT. TR 429. CC will often call the MT to ask questions that may help with pricing out the job and giving instructions to the contractor. MT may be on a job and upon troubleshooting find that a span of cable needs to be replaced. They would then fill out a plant replacement document and send it to their supervisor to refer it to construction. TR 113.

If the MT is concerned about the job turnaround, they will often call the CC to inquire about the construction timeline. MT may find a pole shift, power supply shift that needs to be complete or low hanging hardline that needs to be raised. They would follow the plant replacement process to refer the job to construction. MT may find the location of a power supply or a node to be in an unsafe location and want it relocated. They would follow the plant replacement process to refer the job to construction. When contractors have to install a new amplifier, CC refers the job to maintenance so they can set up the amplifier correctly. For his part, the MT must “read and

accurately interpret” the design maps prepared by the CC and “[m]ay collaborate with construction personnel on new build and plant modifications.” CX 13 (MT job description). About once a month, FT contact CC to get access to maps of infrastructure, called prints. TR 405, CC communicate with MT about pricing when the construction referral is unclear. TR 406. The MT number is on the referral. TR 407. Information from the MT may affect pricing. TR 408. CC communicate with MT about scheduling and job turnaround. TR 408

FT and MT also notify the CC if the contractor did not complete the job to the company’s standards. CC will then perform a quality check and have the contractor correct the issue. FT and MT inform the CC about new housing developments under construction in the towns they work in. CC will then contact the developer about getting cable installed in the new development. TR 419.

**b. TQA FT Frequently Interact with Unit Employees.**

The TQA FT has daily contact with other unit employees because all petitioned-for employees work in the same facility with overlapping work hours. The TQA FT and FT communicate regularly on ongoing jobs, especially on repeat calls.

Q. (By Mr. Carrouth) ... would an FT tech ever need to talk to a TQA tech to actually do his work?

A. Yes.

Q. When would he have to do that?

A. Maybe just for some background on a job they might have in common with each other ...

Q. How many times do you think that has happened?

A. Probably daily. I don’t know.

TR 255-256. “They talk a lot.” TR 256 (Dickerman).



The TQA FT also works with the MT if there is an issue with slow service, or if the TQA FT needs particular equipment operated by a MT, such as a bucket truck. On the other hand, TQA FT do not generally interact with other TQA FT, and (b) (6), (b) (7)(C), as the only TQA FT in North Windham, does not work with other TQA FT. TR 344. Sinosk testified that (b) (6), (b) (7)(C) location as the sole TQA FT leads to more interactions with North Windham supervisors. TR 364-365.

#### **6. Interchange with Other Employees.**

TQA FT and FT are currently doing the same work, so interchange does not really apply. Nonetheless, TQA FT fill in for FT when there is an unexpectedly large amount of FT work – over “regular quota”- including if a FT is unexpectedly out. TR 366-367. In a storm, CC fill in for other employees. TR 420. Interchange should not be a significant factor because MT and FT do not fill in for each other.

#### **7. Common Terms and Conditions of Employment.**

CC, TQA FT, FT and MT all enjoy the same terms and conditions of employment, including savings, 401k, health, dental, vision, family leave, PTO, tuition reimbursement and free Spectrum products. UX 1 (employee handbook). They are subject to the same Code of Conduct. UX 2. The salary range for CC, MT and FT are similar. *Compare UX 4 with CX 8.*<sup>9</sup> Actual hourly rates are similar, especially at comparable progression levels. CX 7. The salary range for all positions is similar. *Compare UX 4 with CX 8.* The monthly performance bonus system [“PAA”] is similar and the PAA bonus system and levels are comparable. TR 72-75.<sup>10</sup> All unit employees eligible to participate in the Charter Appreciation and Spectrum Super Star incentive

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<sup>9</sup> CC do not participate in PAA, but neither do FT I and II. TR 269.

<sup>10</sup> Dickerman testified that explaining the system would take days; suffice to say there was no evidence how the PAA scorecard would be different by position. TR 287-289.

programs. TR 368-370. All employees have 7.5 – 8 hour shifts for overlapping work hours and weekdays. CX 7.

All unit positions work in the field at residential and commercial locations in northern Connecticut. CX 2. All work on jobsites, including in customer homes. TR 144. All respond to customer concerns. TR 146. All are assigned a company vehicle – van, pickup or bucket truck – which they may take home. The vehicles carry similar tools and equipment. TR 105-108. All employees must “TQA” their vehicles monthly. TR 197, 199. All unit employees are assigned a gas card and cell phone. TR 108. All unit employees wear the same uniform. TR 77-78; 179-180. All unit positions use the Kronos system to record time. TR 76; 370.

CC, TQA FT, FT and MT have similar career progressions. Each position is broken in levels I-III or I-VI. At entry level, promotion is based on completion of training elements and self-progression, and at advanced level(s) by application to a posted vacancy. TR 100; UX 4.

The career progression for CC is part of the MT career path. (b) (6), (b) (7)(C) was both a FT and MT prior to becoming a CC. TR 389-390. Another employee moved from MT to CC when he failed to make weight limit, TR 394, and another, Rob Morin, just made the move. TR 395. (b) (6), (b) (7)(C) trained both of them. TR 394, 395. Most MT come from FT, and the TQA is usually a former FT. Rarely, a FT will become a MT. CC “will come out of field operations or maintenance.” TR 132; 133 (Liccone). The CC supervisor, Michaud, also started as a MT. TR 181. The last three CC hired came from the MT department. TR 188. TQA FT and FT also share the same career path. TR 274-276 (Dickerman); CX 19.

The career progression for TQA FT is part of the FT career path. At FT III, the employee may elect to continue to FT IV or move laterally to TQA FT I or MT I. CX 19 at 5.

**8. At Senior Levels, All Unit Positions are Commonly Supervised.**

“Supervision” means supervisors who have the authority to hire, fire or discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Res. Assocs.*, 301 NLRB at 402; *NCR Corp.*, 236 NLRB 215, 215 (1978).

By this standard, rather than company titles, CC are not separately supervised. Wages, benefits, bonus system and significant discipline are determined by the Area Vice President or corporate compensation committee. TR 83-84; 128. Employee complaints are directed to a “Solution Channel” or HR. UX 1 at 6-7. All work is scheduled and assigned through central routing systems, TR 89, called “drip,” independent of supervisors. TR 89, 282 (Dickerman); 306 (Senosk). Work is assigned through the central ROC system regardless of classification. TR 104. Of course, on a classification level, supervision is already splintered. The third shift MT III has a different supervisor than the other MT, and the FT IV has a different supervisor than other FT. UX III, TR 123, 125.

The employer presented no evidence that local supervisors have meaningful supervisory authority. Employees work independently in the field. Supervisors do not select contractors for CC. TR 409. Local supervisors have no authority to hire or fire, assign work, set pay, issue discipline above a warning (and no evidence of warnings was offered). TR 345-346. There is no day-to-day supervision because Sinosk is rarely at North Windham, and sees (b) (6), (b) (7)(C) only about once a month. TR 383.

**Conclusion**

For the foregoing reasons, the challenges should be overruled and the ballots opened.

Respectfully submitted,

IBEW 2323

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2022, I e-filed this document through the Agency's website and served a copy on:

Michael Carrouth, Esq.

/s/Janine Durand